

Before the  
Federal Communications Commission  
Washington, DC 20554

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In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Audrey Pack Memorial Library	)	NEC.470.12-09-99.3500063
Spring City, Tennessee	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.	)	

### ORDER

**Adopted: March 28, 2001**

**Released: March 29, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a waiver request filed by the Audrey Pack Memorial Library (Audrey Pack), Spring City, Tennessee, seeking review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).<sup>1</sup> Audrey Pack requests a waiver of the January 19, 2000 FCC Form 471 filing deadline.<sup>2</sup> For the reasons set forth below, we grant Audrey Pack's waiver request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.<sup>4</sup> The Administrator must post the FCC Form 470 on its website and the applicant is required to wait 28 days before making a

<sup>1</sup> Letter from John P. Conroy, Audrey Pack Memorial Library, to Federal Communications Commission, filed July 3, 2000 (Waiver Request).

<sup>2</sup> See *id.*

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>4</sup> 47 C.F.R. §§ 54.504(b)(1), (b)(3).

commitment with a selected service provider.<sup>5</sup> Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.<sup>6</sup> The Commission's rules require that the applicant file a completed FCC Form 471 by the filing window deadline to be considered pursuant to the funding priorities for "in-window" applicants.<sup>7</sup>

3. Audrey Pack filed its FCC Form 470 on December 9, 1999 for discounted services for Funding Year 3. SLD posted Audrey Pack's FCC Form 470 to its website on January 7, 2000. The filing window for Funding Year 3 closed January 19, 2000, thus, Audrey Pack could not have complied with the Commission's 28-day competitive bidding requirement and completed its FCC Form 471 within the filing window. Knowing that its application could not be completed within the filing deadline, Audrey Pack did not file a FCC Form 471, but filed a waiver request with SLD on January 19, 2000.<sup>8</sup> In its letter to SLD, Audrey Pack challenged the late posting of its FCC Form 470 to SLD's website. SLD responded with an Acknowledgment of Waiver Request, informing Audrey Pack that, because the Commission's rules did not permit SLD to consider such requests, the applicant had to submit any waiver requests to the Commission.<sup>9</sup> Audrey Pack filed the instant waiver request with the Commission on July 3, 2000.<sup>10</sup>

4. The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.<sup>11</sup> Absent special circumstances warranting a deviation from the general rule, waivers of filing deadlines should not be granted. We have reviewed the record before us and conclude that Audrey Pack has demonstrated special circumstances upon which to grant its waiver request. Although Audrey Pack timely submitted its FCC Form 470, SLD delayed its posting until such time that it was impossible for Audrey Pack to comply with our 28-day competitive bidding rule prior to the FCC Form 471 filing deadline.

5. SLD's delay in posting apparently arose from its confusion about Audrey Pack's billed entity. Specifically, in Block 4, Item 16 of its FCC Form 470, Audrey Pack indicated that

<sup>5</sup> 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

<sup>6</sup> 47 C.F.R. § 54.504(c).

<sup>7</sup> 47 C.F.R. §§ 54.504(c); 54.5079(c).

<sup>8</sup> Letter from John P. Conroy, Audrey Pack Memorial Library, to Schools and Libraries Division, Universal Service Administrative Company, filed January 19, 2000.

<sup>9</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to John P. Conroy, Audrey Pack Memorial Library, dated June 6, 2000 (Administrator's Decision on Waiver Request).

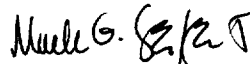
<sup>10</sup> See Waiver Request.

<sup>11</sup> 47 C.F.R. § 1.3; See e.g. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), ("Waiver is [] appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.").

it was a single-site library. In Block 4, Item 17, however, Audrey Pack listed the billed entity as the Town of Spring City. SLD's record reflects that on December 13, 2000, SLD contacted Audrey Pack by telephone for clarification about the recipient of service. Audrey Pack explained that the library requesting funds was a single-site library. Audrey Pack's FCC Form 470 should have been posted to the SLD website pursuant to the December 13, 2000 conversation. However, SLD did not post Audrey Pack's FCC Form 470 until January 7, 2000. This delay made it impossible for Audrey Pack to comply with the Commission's competitive bidding requirements prior to the FCC Form 471 filing deadline. The record shows that Audrey Pack complied with the program's requirements in providing additional information to SLD on December 13, 2000. Thus, the untimely posting of the FCC Form 470 is not attributable to Audrey Pack. We therefore grant Audrey Pack's waiver request.

6. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Waiver Request filed by Audrey Pack Memorial Library, Spring City, Tennessee on July 3, 2000, IS GRANTED to the extent provide herein. We direct SLD to process Audrey Pack's FCC Form 471 as timely filed within the filing window.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
Deputy Chief, Accounting Policy Division  
Common Carrier Bureau